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| 10/037,941   | 01/03/2002  | Carolyn Jean Cupp    | 112701-330                      | 7917                        |
| 29157  | 7590        | 01/29/2008           |                                 |                             |
| BELL, BOYD & LLOYD LLP<br>P.O. Box 1135<br>CHICAGO, IL 60690 |             |                      | EXAMINER<br>SAYALA, CHHAYA D    |                             |
|  |             |                      | ART UNIT<br>1794                | PAPER NUMBER                |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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|                              |                                      |                                    |  |
|------------------------------|--------------------------------------|------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/037,941 | <b>Applicant(s)</b><br>CUPP ET AL. |  |
|                              | <b>Examiner</b><br>C. SAYALA         | <b>Art Unit</b><br>1794            |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 October 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-20, 25-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hand et al. (US Patent 5431927) and Collings et al. (EP 0645095) in view of Speck et al. (US Patent 6025004) and Procter (US Patent 4259361).

Hand et al. teach a pet food product made from fiber, containing protein and carbohydrate having a thickness 0.32-0.70 inch (col. 5, line 10), a length 0.32-0.75" (col. 7, lines 22-23). The width is not given and neither is the Office equipped to manufacture prior art products and compare physical dimensions or characteristics that applicant has chosen to describe his product with, with the claimed invention. Col. 8, line 17 teaches that the thickness is 0.5 inch. The product is obtained after an extrusion process and therefore it would be inherent that the protein would have been denatured and the carbohydrate gelatinized. The fiber content is given as between 10-25%. See col. 5. While the fact that little or no humectant is added to produce hard textured pet food products is well known in prior art, this patented product also does not disclose the addition of a humectant. The product is used for oral care, that reduces teeth plaque,

stain and tartar. The patent teaches a product with a density between 10 to 35 lbs/cu' (see col. 4, line 44). At col. 5, lines 5-12, patentees state:

**While the striated product of the present invention can be any of several shapes, the shapes which are most desirable for mechanical cleaning efficacy include a cylindrical or disc shape. Disc-shaped pellets having thickness of about 0.32 to 0.70 inch, a diameter of about 0.7 to about 1.2 inch are most preferred in the practice of the present invention. (emphasis added).**

The patent does not teach that its product is unstriated. However, the patent teaches that apart from its expanded striated product obtained "by creating conditions during the extrusion of the product resembling laminar flow", and by maintaining the inner walls of the passageway at a coefficient of friction no greater than 0.2", i.e. "conditions resembling laminar flow", that produces an extrudate having striated structural matrix (col. 3, line 55 to col. 4, line 3), it is possible to produce, in contrast, fiber containing products extruded under conditions of *turbulent flow* with the fibrous ingredients randomly distributed in the food product (col. 3, lines 48-50). See col. 2, lines 44-56, that shows the contrast. See also col. 4, line 15+, that clearly delineates conditions for such a laminar flow process:

Typically, a condition resembling laminar flow is obtained in the extrudate of the present invention by passing the plasticized food ingredient mixture, heated to a temperature of about 240.degree. to about 320.degree. F. and preferably about 270.degree. to 300.degree. F. at a relatively low velocity, e.g. about 12 to about 20 in./sec., preferably about 13 to about 17 in./sec. and most preferably about 14 to

about 16 in./sec., through a discharge passageway having a length of about 2 to about 4 inches and a diameter of at least about 0.35 inches and preferably about 0.5 to about 0.75 inches, the inner walls of the passageway being coated with a layer of polytetrafluoroethylene.

Therefore, by simple logic and scientific reasoning, extruding under conditions of turbulent flow, and using a coefficient of friction for the discharge passageway, which is way greater than 0.2, one of ordinary skill in the art would have reasonably expected a product that is not striated, and therefore of a different texture. Thus, Hand et al. teach the conditions necessary to make both the unstriated and striated pet food product, but exemplify only the striated product. Therefore, while the ingredients are the same as claimed herein, the dimensions are comparable to those claimed, and are clearly illustrated as being of a size and shape so as to obtain the "most desirable" mechanical cleaning efficiency, the density is not the same and the product is striated.

Such an unstriated product described by Hand et al. is shown by Collings et al., wherein this reference teaches no humectant and teaches all the other limitations but not the dimensions of the product as claimed, or its density and does not subject the product with any of the conditions during extrusion as shown for the laminar product. Collings et al. disclose an extruded dog treat food product which comprises a structural matrix containing proteins, starches, carbohydrates and fiber such as cellulose (pg. 3). A typical cellulose fiber content is shown to be in the range of 2-10%. The mixture containing the starch and protein is gelatinized ("plasticized"), due to the high-temperatures of the extrusion process disclosed, and thus the end product contains

denatured protein, as well as gelatinized carbohydrate. It is noted that the extrusion is done with a "heatable extruder having one or more helical transfer screws axially rotatable...., with a restricted extrusion discharge passageway" (pg. 3, lines 38-52), serving to cook and plasticize the mixture, thus providing a non-laminar flow of the mixture through the chamber(s). Following extrusion, the pet food thus produced has a final moisture level of about 6-10% (top of page 4). Further, Collings et al. does not teach the use of a humectant. At mid-page 2, reference is made to a then copending application, 07/899,534, now US Patent 5431927 to Hand et al. (applied here), directed to a striated pet food, and at lines 30-40 of page 2, it is stated that, in contrast, Collings et al. are disclosing the production of a non-striated product, i.e. "a product that was not in a stratified condition."

When it was attempted to adapt the composition and process conditions of SN 07/889,534 to the manufacture of a dog treat food product, that is, a product that was not in a stratified condition, it was determined that the extruded, expanded dog treat product did not have sufficient structural integrity to withstand breakage due to drop impact, i.e., the product could not satisfactorily withstand the impacting internal pressure when the container in which the dog treat product was packaged was dropped during handling and use.

However, at page 4, line 1+, patentees of the EP patent, disclose the solution to this, thus:

**In preparing the final dog treat food product, the final moisture content of the expanded extrudate piece, is an important feature of the present invention. To obtain an acceptable breakage resistant product, the moisture content of the final product is adjusted to the range of about 6 to about 10%. Preferably the**

moisture content is reduced to about 7 to about 9% by weight. At moisture levels below 6% the product becomes extremely fragile. At moisture levels above about 10%, the risk of mould growth significantly increases.

In the step of drying the extruded food products to achieve the desired final moisture level, the relationship between the drying temperature and the length of time for the drying step, is a critical feature in the manufacture of the dog treat product of the present invention. Thus, the drying process used to obtain the final moisture level in the dog treat product requires extremely careful control of the temperature and humidity and must be done relatively slowly in order to produce a product of satisfactory breakage resistance. If the drying is carried out too quickly, i.e., at too high a temperature, e.g. above about 250°F (121°C), the dried pieces or chips of extruded product will be fragile and exhibit high breakage rates. Drying carried out too quickly, will "case harden" the extruded chips creating internal microfissures which render the product vulnerable to fragmentation along the microfissure lines.

As can be seen from this discussion, while the patent to Hand et al. teaches the principles of obtaining the different textures, both striated and unstriated, and exemplifies one, Collings et al. exemplify the other. Furthermore, Collings et al. teach a product that resists breakage, an advantage that would be seen as beneficial by one of ordinary skill in the art, in the use of an extruded dry pet food product that has sufficient structural integrity, to be used to effectively remove tartar, stain and plaque.

Collings et al. do not teach the density of their product. Nevertheless, Speck et al. establish that it was known in the art at the time the invention was made to adapt an extruder's flow characteristics in order to control the density of kibbles, and therefore to optimize such parameters so as to obtain a density within the range shown by Hand et al. and as claimed herein, would have been within the realm of the skilled person, since

Hand et al. shows that the density was for a product that had a benefit: improved oral care. Speck et al. also disclose that the bulk density can be controlled as well, the extruder be adjusted to yield automatically a predetermined bulk density. See col. 12, and col. 4, lines 50-55. With respect to claims 28-33, since Collings et al. teach non-laminar flow extrusion, then it follows that the inner cellular structure, circular pores and sponge-like structure would result. Compare the extrusion conditions at col. 4 in '927 and pages 3-4 in '095, although the same extruders are used by both patents.

As for the dimensions of the kibble, while Hand et al. disclose the length and thickness which fall within the claimed dimensions and discloses *any suitable shape such as cylindrical or disc-shaped kibbles*, Procter teaches a kibble size not greater than "about ½ inch (average of measurements in the three dimensions)". Procter is wholly drawn to preparing dehydrated feedstuffs for animals (col 2, lines 43-45) in the form of kibbles. Therefore, applicant's claim to an extruded kibble, whose size in 3 dimensions, is that which conforms to such a prior art disclosure:

(length) 15mm= 0.59"

(width) 13.5mm= 0.53"

(thickness) 12mm= 0.47"

and is already known in prior art. Compare this with the Hand et al disclosure, a thickness of about 0.32 to 0.70 inch, a diameter of about 0.7 to about 1.2 inch as the most preferred embodiment. Furthermore, it would have been obvious to one of ordinary skill in the art who is looking to use the kibbled product for cleaning tartar, plaque and stain, that the size of a kibble should be optimized based on teeth cleaning



benefits and bite size of the pet, since after all Hand et al. teach their shapes which are most desirable for mechanical cleaning efficacy, and based on this, it would not require more than ordinary skill in the art to base the size on such a need too. Since it is common knowledge that all pets do not have the same bite size, then it would have been obvious to optimize such a kibble dimension within those disclosed by the above references, as necessary for the breed size or age (i.e. puppy, etc.) of the pet's bite size, and with the motivation to provide the tartar reducing function. Note too, that in the absence of any claim herein reciting any particular shape, if the shape were to be adapted to a bone-shape-like product (or "cylindrical" as in Hand et al.), which is the most common shape for pet food chew products, then it would follow that the length would be more than the width. Since the method of making the pet food is rendered obvious and the pet food is for feeding a pet, then the method of claim 20 is also rendered obvious, since the discovery of a result that would flow naturally from teachings of prior art are not patentable. *In re Libby*, 118 USPQ 94 (CCPA 1958).

2. Claims 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hand et al. (US Patent 5431927) and Collings et al. (EP 0645095) in view of Speck et al. (US Patent 6025004) and Procter (US Patent 4259361) and further in view of Staples et al. (US Patent 5000490) or Simone et al. (US Patent 5407661).

The primary references are as described above. Claims 21-24 recite a mixture of different sized kibbles, read on having a mixture of kibbles having striated *and* non-striated appearance (note the "at least one kibble..." language), and claims 21-22 are

so recited as to include a product that has a humectant. Since the prior art applied here teach both striated and unstriated appearances, both without humectant, and the size of kibbles can be optimized to about the disclosed sizes by Procter and Hand et al., and while Staples et al. or Simone et al. also disclose a product for oral care that contains a humectant, barring any evidence to the contrary, it would have been obvious to combine a variety of sizes, appearances or textures, include humectants or not, since all of the products would have reasonably been expected to provide the same function and benefit concerning the pet's oral care, since they are all drawn to the oral care of pets. Note the ratio of a first any-sized kibble to a second any-sized kibble, 20-80%, which lends evidence to the position here, that there appears to be no criticality in either the variation of size or amount, and that a mixture such as the one claimed, provides a variety of sizes to the pet, since there is no assertion in the specification that doing so produced any patentable result. As for the variation of size, note that Hand et al. states that "the strand is cut into 0.32 to 0.75 inch lengths to form pellets" and thus it would have been obvious to one of ordinary skill in the art to have provided the pet food of Collings et al. with a variety of sizes within the stated range as recommended by Hand et al.. The same applies to other dimensions also, when prior art is considered as a whole, i.e. as applied above, because when a range of dimensions is rendered obvious from prior art, to cut an extrudate to any desired length within that range, is not inventive.

***Response to Arguments***

Applicant's arguments filed 10/29/2007 have been fully considered but they are not persuasive.

At page 2 of his Remarks, applicant has argued that Speck fails to disclose or support any density of a pet food as well as stating that neither Hand nor Proctor nor Collings teaches the claimed density of an unstriated pet food product. In response, there is no requirement in a 35 USC 103 rejection that a single reference show all the limitations claimed herein in claims 1-33. For instance, Hand discloses a pet food product with a density between 10 to about 33 lb/ft<sup>3</sup> (col. 6, line 1). Hand et al. is to a pet food product also. Typically, pet foods are sold by weight, however, bulk density is an important factor that is considered during manufacture because it determines the volume of the packaging or container required to market the product (i.e. density multiplied by volume is mass). Typically also, pet food products are generally optimized within a largely used range by market products. For instance, applicant claims 16.8 to 20 lbs/cu. ft, and Hand discloses 10 to 33 lb/cu. ft, while Speck et al. teaches how to extrude kibbles in such a way as to not only control the bulk density of a kibbled product but to maintain the bulk density at a predetermined bulk density during extrusion. Based on such, to optimize the density within Hand's disclosed range, given Speck et al.'s disclosure, cannot be said to be inventive, and applicant has failed to show why this is so in view of prior art disclosures.

Next, applicant argues that Procter indicates that the kibble may not be greater than *about* ½ inch, an average of measurements in the three dimensions, which applicant claims does not suggest 0.53 inches, applicant's average of the

measurements claimed at claim 1. Applicant goes on to present an extensive discussion Proctor's use of "about" and urges that the skilled artisan would interpret this as  $\frac{1}{2}$  inch and not "about"  $\frac{1}{2}$  inch. Even if applicant's argument is considered and "about" is simply ignored, and taking into consideration Hand et al.'s disclosure of thickness and diameter for patentee's kibble (see the rejection itself), and further, taking into consideration a well known fact that kibble dimension is primarily based on bite size of the pet (which is reflected by the fact that pet food products are sold by pet size), and the fact that this rejection is under 35 USC 103, it is not clear how applicant's dimension of a kibble, which is 0.53" on an average, is so different from and unobvious compared to 0.5", also on an average, that this difference of 0.03" renders this invention patentable. The manufacture of a predetermined, particularly-sized kibble within the measurements given by Hand and even Procter's about  $\frac{1}{2}$ ", is well within the skill of the artisan, given the fact that 1) Speck et al. provides evidence that an extruder can have the extruder knife so positioned so as to cut the extrudate to a desired size kibble (col. 4, lines 48-55) and 2) the size of a kibble is based on the size of a dog/the bite size of the dog.

Next applicant has implied that the examiner has combined the references arbitrarily, that the Affidavit of record has not been considered by the examiner, and that the affidavit established that the unstriated appearance and inner cellular structure significantly affected the performance of the pet food compared to products with a striated appearance, and that the unstriated and striated products were shown to be different in functionality in terms of plaque and tartar reduction.

First, the Office action has been set out *in detail*, and applicant's statement that there is no reason why the skilled artisan would combine the cited references to arrive at the "present claims" is strenuously disagreed with in view of the reasons given for making the combination of references. Second, the affidavit has been carefully considered and does not establish patentability for the following reasons:

As stated by applicant the affidavit re-states what Hand et al. teach at col. 3 that laminar flow in extrusion, produces a striated structure, whereas applicant has used turbulent flow in the instant case and has produced an unstriated appearance. Hands et al. in this regard states the following:

**Laminar flow is distinguished from turbulent flow which is the normal flow condition of extruded plasticized animal food products.** In turbulent flow, fluid elements are in chaotic motion, and small random fluctuations in the velocity at a point will exist even though the average mean velocity may remain constant along its axis. Laminar flow is a flow with constant preparation of streamlines so that constant velocity surfaces remain at constant separation and laminae or sheets of fluid slide frictionless over one another. By creating conditions during the extrusion of the product resembling laminar flow, the fiber bearing ingredients in the product of the present invention are aligned in transverse striations in the product matrix. In contrast, fiber-containing food products which are extruded under conditions of turbulent flow contain the fibrous ingredients randomly distributed in the food product. Such food product, when chewed by an animal, crumbles rather than fractures and exerts limited mechanical cleaning action on the animal's teeth.

(Note col. 3, lines 35-37, in particular) ☺

If turbulent flow is the norm, applicant has not provided any reasons why patentability should be hinged on this.

The next point applicant has raised about the affidavit is that based on rheological and acoustic testing of the unstriated product of the present invention versus other striated products, these clearly products are clearly different and present different functionalities in terms of plaque and tartar reduction. In this regard the affidavit points to Examples 3 and 4 of the specification. The closest reference is that of Collings. Note applicant's statement in the affidavit at paragraph 7 with regard to Collings: "While Collings is directed toward an unstriated dog food product, Hand, by contrast is directed toward an expanded, striated structural matrix: which, in my opinion, teaches away from Collings." The comparison should therefore be made with the closest prior art. The comparison in the examples 3 and 4 of the affidavit, however, is between Purina Dog Chow and Alpo complete and the inventive product defined by claim 1 for instance. There is no explanation why these products were chosen, were they of the same size as claimed, were they striated or unstriated, etc. Applicant's comparison between the claimed product and "standard dry dog food" fails to establish a reasonable standard for comparison. On the other hand, if indeed, as Hand points out, the preparation of the standard dry dog food was prepared by the turbulent flow method, which "is the normal flow condition of extruded plasticized animal food products" and applicant's instant invention was also produced by turbulent flow (see paragraph 5 of the affidavit "Formation of the claimed dried pet food does not occur through a laminar flow extrusion process, but rather through an extrusion process that is more turbulent in nature. As a result, the dried pet food is not striated, or at least, does not have any visible striations"), then it is not clear what the comparison was based on and how this is

relevant to the rejection made. A nexus is required between the merits of the claimed invention and the evidence of secondary considerations. In order to be of any probative value the relevance of the comparison between Purina Dog Chow and Alpo complete with the claimed invention and the references that the claims have been rejected with, Should be explained by applicant. "The weight attached to evidence of secondary considerations by the examiner will depend upon its relevance to the issue of obviousness and the amount and nature of the evidence. Note the great reliance apparently placed on this type of evidence by the Supreme Court in upholding the patent in *United States v. Adams*, 383 U.S. 39, 148 USPQ 479 (1966)." Furthermore, for data presented to be relevant, it has been well established that "[A]ppellants have the burden of explaining the data in any declaration they proffer as evidence of non-obviousness." *Ex parte Ishizaka*, 24 USPQ2d 1621, 1624 (Bd. Pat. App. & Inter. 1992). Moreover, there are many contradictions in applicant's declaration as well as response, to make any coherent case for patentability.

➤ For instance at paragraph 5, applicant states as follows:

"Formation of the claimed dried pet food does not occur through a laminar flow extrusion process, but rather through an extrusion process that is more turbulent in nature. As a result, the dried pet food is not striated, or at least, does not have any visible striations"

➤ At paragraph 7, applicant states with regard to Collings:

"While Collings is directed toward an unstriated dog food product, Hand, by contrast is directed toward an expanded, striated structural matrix: which, in my opinion, teaches away from Collings."

➤ In his response filed 10/29/2007, he states at page 4, lines 1-3:

"For example, Collings is directed toward an unstriated dog food product. Hand, by contrast, is directed toward an expanded, striated structural matrix, which teaches away from Collings and the product of the present invention."

➤ In the same response, at page 4, full paragraph 3, he states:

"In contrast, Collings is entirely directed toward a striated dog food product having improved resistance to breakage on shipping and handling."

Therefore, applicant's position on the Collings product is completely confusing as to whether Collings is drawn to an unstriated product or a striated product. Based on this, applicant's traversal is also confusing.

At pages 6-7, applicant's traversal of each and every applied reference separately has been noted. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

With regard to Procter and Speck, applicant has discussed the objective of those inventions whereas these references were used only for their specific teachings as relevant to the instantly claimed invention.



At page 6 of the response applicant's statement that the examiner has used improper hindsight has been noted. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

With regard to the traversal at page 7, applicant's arguments have been carefully considered and it is being held that since claim 21 reads on only one kibble being unstriated, it is being assumed that the claim is open to the remaining being unstriated. Also, claim 21 includes humectants. Applicant's traversal, however appears to assume that the claim is to a product with an unstriated appearance only, and states that the combination including the Hand reference is improper. This is disagreed with. As for the different sized kibbles, this has already been addressed in the rejection. There is nothing of record, in the specification, affidavit or examples that suggests that having different sized kibbles produced any unobvious result. As applicant states, Hand discloses a finished product that was extruded to the same length and Hand does not show a variety of lengths. However, this is in error, because Hand shows that the extrudate was cut into 0.32 to 0.75 inch lengths to form pellets, clearly suggesting that the lengths of these kibbles were varied. See col. 7, lines 20-22:

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Sayala whose telephone number is (571) 272-1405. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you

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have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



C. SAYALA  
Primary Examiner  
Group 1700.